Yau Jiok Hua v Sykt Kilang Bata-Bata Chip Siah Sdn Bhd

HIGH COURT (MELAKA)—CIVIL SUIT NO 22-130 OF 1997
AUGUSTINE PAUL J
12 JUNE 1988

Legal Profession *— Remuneration — Bill of costs — Application by client for taxation of counsel's gross sum bill after expiry of six month period prescribed by ss 126(1) and 128(1) — No agreement between parties in respect of the plaintiff's costs — Client did not request for bill containing detailed items — Counsel issued writ for recovery of costs under s 124 — Whether ss 121(1)(b), 126(1) and 128(1) refer only to bill containing detailed items and not to gross sum bill — Whether client entitled to taxation on the gross sum bill as provided by s 121(1)(b) and (c) — Whether client had lost his right to taxation of a bill containing detailed items — Legal Profession Act 1976 ss 121(1)(b), 126(1) & 128(1) — Rules of the High Court 1980 O 59 r 24*

Words and Phrases *— 'Bill of costs' — Legal Profession Act 1976 ss 121(1)(b), 126(1) & 128(1)*

The plaintiff — an advocate and solicitor — was retained by the defendant for certain legal matters. There was no agreement between the parties in respect of the plaintiff's costs. On 27 May 1997, the plaintiff delivered its gross sum bill to the defendant. The defendant objected to the bill but did not take any further step in the matter till the plaintiff issued his writ for the recovery of the costs on 9 December 1997. The writ was served on the defendant on 24 December 1997. On 22 January 1998, the defendant filed an application pursuant to s 121(1)(b) of the Legal Profession Act 1976 ('the LPA') praying for an order for taxation of the plaintiff's gross sum bill. The defendant submitted that it is entitled, as of right, to have the bill taxed upon request in accordance with s 121(1)(b) as the plaintiff has commenced action for the recovery of the costs. The plaintiff argued that s 121(1)(b) only becomes applicable when no bill has been delivered and the advocate and solicitor commences an action for the recovery of his costs. According to the plaintiff, the applicable provision in this case is s 126; and, since the six month period prescribed by ss 126(1) and 128(1) had expired, the defendant was not entitled for an order for taxation.

Held, allowing the defendant's application:

(1) To avoid the conflict between s 121(1)(b), and ss 126(1) and 128(1), the latter provisions must be construed to refer only to a bill containing detailed items and not to a gross sum bill; thus the provisions will then operate independently (see p 763G–H).

(2) The reference in s 126(1) to the right of taxation of a bill of costs clearly contemplates a bill of costs that is ready for taxation within the meaning of s 132 and O 59 r 24. The result is that a bill which is not drawn up as required by O 59 r 24 (ie a bill of

costs which contains detailed items in the manner required by the Order) is not a bill of costs within the meaning of the rule and consequently s 132. As s 128(1) refers to the six months period in s 126(1), it must also refer to a bill in the same form (see p 764G–H).

(3) The reference to taxation of a gross sum bill under s 121(1)(b) is clearly excluded from the ambit of ss 126 and 128. The phrase 'bill of costs' in ss 126(1) and 128(1) cannot be a gross sum bill as it is not a bill in taxable form within the meaning of s 132 and O 59 r 24. The law applicable to a gross sum bill would therefore be as stated in s 121 (see pp 764I and 765A).

(4) Section 124 requires a bill of costs to be delivered to the chargeable person before an action can be commenced for the recovery of costs. The reference to the delivery of a 'bill of costs' in the section would, on a literal reading of the section, exclude a gross sum bill from its ambit. This would preclude the commencement of an action to recover costs based on a gross sum bill (see p 765B–C).

(5) It will be observed that the underlying theme of s 121 which deals with gross sum bills is the delivery of such bills to the persons chargeable before commencement of an action to recover the costs. Though the section itself does not expressly require delivery of a gross sum bill before commencement of an action, it is worded on an implication that there must be such delivery. Section 121 must therefore be read as being subject to s 124(1) in the light of the reference that it makes to the delivery of gross sum bills. That would require s 124(1) to be interpreted to include both form of bills (see p 766E, G).

(6) The law enshrined in s 121 is clear. If the party chargeable does not take any step after service on him of the gross sum bill and an action is commenced for the recovery of the costs, his only remedy is to request for an order of taxation within a period of one month from the service on him of the writ or other originating process claiming for the costs. The taxation shall be on the gross sum bill as provided by s 121(1)(b) and (c). Needless to say, he would have lost his right to taxation of a bill containing detailed items (see pp 767I and 768A).

[Bahasa Malaysia summary

Plaintif — seorang peguambela dan peguamcara — telah dibayar retainer oleh defendan untuk perkara undang-undang tertentu. Tidak ada perjanjian di antara pihak-pihak berkenaan dengan kos plaintif. Pada 27 Mei 1997, plaintif menyerahkan bil jumlah kasar kepada defendan. Defendan membantah bil itu tetapi tidak mengambil langkah selanjutnya dalam perkara itu sehingga plaintif mengeluarkan writ untuk mendapatkan kos pada 9 Disember 1997. Writ itu disampaikan kepada defendan pada 24 Disember 1997. Pada

22 Januari 1998, defendan memfailkan permohonan mengikut s 121(1)(b) Akta Profesyen Undang-Undang 1976 ('APU') menuntut perintah penetapan bil jumlah kasar plaintif. Defendan berhujah bahawa dia berhak, mengikut hak, untuk menetapkan bil itu atas permohonannya mengikut s 121(1)(b) kerana plaintif telah memulakan tindakan untuk mendapatkan kos itu. Plaintif berhujah bahawa s 121(1)(b) hanya terpakai apabila tiada bil diserahkan dan peguambela dan peguamcara memulakan tindakan untuk mendapatkan kosnya. Mengikut plaintif, peruntukan yang terpakai dalam kes ini adalah s 126; dan, oleh kerana tempoh masa enam bulan seperti yang ditetapkan oleh ss 126(1) dan 128(1) telah tamat, defendan tidak berhak untuk mendapatkan perintah penetapan.

Diputuskan, membenarkan permohonan defendan:

(1) Untuk mengelakkan konflik di antara s 121(1)(b), dan ss 126(1) dan 128(1), peruntukan-peruntukan ss 126(1) dan 128(1) mesti ditafsirkan sebagai hanya merujuk kepada bil yang mengandungi perkara-perkara terperinci dan bukan kepada bil jumlah kasar; oleh itu peruntukan-peruntukan itu akan beroperasi secara tersendiri (lihat ms 763G–H).

(2) Rujukan dalam s 126(1)(b) kepada hak penetapan bil kos dengan jelasnya membayangkan bil kos yang sedia untuk penetapan dalam ertikata s 132 dan A 59 k 24. Kesannya adalah bil yang tidak dibuat seperti yang dikehendaki oleh A 59 k 24 (iaitu bil kos yang mengandungi perkara-perkara terperinci dalam cara yang dikehendaki oleh Aturan itu) bukannya bil kos dalam ertikata kaedah itu dan s 132. Oleh kerana s 128(1) merujuk kepada tempoh masa enam bulan dalam s 126(1), ia juga mesti merujuk kepada bil dalam bentuk yang sama (lihat ms 764G–H).

(3) Rujukan kepada penetapan bil jumlah kasar di bawah s 121(1)(b) adalah dengan jelasnya dikecualikan daripada lingkungan ss 126 dan 128. Ungkapan 'bil kos' dalam ss 126(1) dan 128(1) tidak boleh merujuk kepada bil jumlah kasar kerana ianya tidak berada dalam bentuk yang boleh ditetapkan dalam ertikata s 132 dan A 59 k 24. Undang-undang yang terpakai kepada bil jumlah kasar dengan demikian adalah seperti yang dinyatakan dalam s 121 (lihat ms 764I dan 765A).

(4) Seksyen 124 menghendaki bil kos diserahkan kepada orang yang boleh dikenakan caj sebelum tindakan boleh dimulakan untuk mendapatkan kos. Rujukan kepada serahan 'bil kos' dalam seksyen itu, atas pembacaan harafiah seksyen itu, mengecualikan bil jumlah kasar daripada lingkungannya. Ini menghalang permulaan tindakan untuk mendapatkan kos berdasarkan bil jumlah kasar (lihat ms 765B–C).

(5) Adalah diperhatikan bahawa tema yang mendasari s 121 yang berkaitan dengan bil jumlah kasar adalah penyerahan bil itu kepada orang yang boleh dikenakan caj sebelum memulakan

tindakan untuk mendapatkan kos. Walaupun seksyen itu sendiri tidak menghendaki secara nyata penyerahan bil jumlah kasar sebelum memulakan tindakan, susunan kata-katanya dibuat atas implikasi bahawa mesti terdapat penyerahan sedemikian. Dengan itu, s 121 mesti dibaca sebagai tertakluk kepada s 124(1) memandangkan rujukan yang dibuat kepada penyerahan bil jumlah kasar. Itu memerlukan s 124 ditafsirkan sebagai termasuk kedua-dua bentuk bil (lihat ms 766E, G).

(6) Undang-undang yang disemadikan dalam s 121 adalah jelas. Jika pihak yang boleh dikenakan caj tidak mengambil apa-apa langkah selepas penyampaian ke atasnya bil jumlah kasar dan tindakan dimulakan untuk mendapatkan kos, satu-satunya remedinya ialah untuk meminta perintah untuk penetapan dalam masa satu bulan daripada penyampaian writ atau proses permulaan yang lain ke atasnya yang menuntut kos. Penetapan adalah atas bil jumlah kasar seperti yang diperuntukkan oleh s 121(1)(b) dan (c). Tidak perlu dinyatakan, dia akan kehilangan haknya untuk penetapan bil yang mengandungi perkara-perkara terperinci (lihat ms 767I and 768A).]

Notes

For cases on remuneration of an advocate and solicitor, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1649–1681.

Cases referred to

Accident Towing & Advisory Committee v Combined Motor Industries Pty Ltd [1987] VR 52 (refd)

Aitkin v Commonwealth (1972) 46 ALJR 631 (refd)

Arataki Honey Ltd v Minister of Agriculture & Fisheries [1979] 2 NZLR 311 (refd)

Ali v Wolkind [1975] 1 WLR 170 (refd)

Australian Alliance Assurance Co Ltd v Attorney General (Qld) [1916] QSR 135 (refd)

Bakker v Stewart [1980] VR 17 (refd)

Braunack v Goers (1979) 23 SASR 1 (refd)

Brisbane City Council v Attorney General (Qld) (1905) 5 CLR 695 (refd)

Commissioner of Pay-roll Tax (NSW) v RG Elsegood & Co Pty Ltd [1983] 1 NSWLR 223 (refd)

Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth) (1981) 147 CLR 297 (refd)

Craig Williamson Pty Ltd v Barrowcliff [1915] VLR 45 (refd)

Farmers Fertilizers Corp Ltd, Ex parte (1916) 16 SR (NSW) 645 (refd)

Ganke v Deputy Commissioner of Taxation of Australia (1975) 25 FLR 98 (refd)

Hamilton Harbour Commissioners v City of Hamilton [1976] 1 MPLR 133 (refd)

Kesultanan Pahang v Sathask Realty Sdn Bhd [1998] 2 MLJ 513 (refd)
Macquarie University v Ryde Municipal Council [1977] 1 NWSLR 304 (refd)
Madras Electric Supply Corp Ltd v Boarland (Inspector of Taxes) [1955] AC 667 (refd)
Milford Haven Conservancy Board v Inland Revenue Commissioners & Ors [1976] 1 WLR 817 (refd)
Mort v Bradley [1916] SALR 129 (refd)
Pratt, Re [1972] QWN 31 (refd)
R v Curran [1983] 2 VR 133 (refd)
Saif Ali & Anor v Sydney Mitchell & Co (A Firm) & Ors [1980] AC 198 (refd)
Salemi v MacKellar (No 2) (1977) 137 CLR 396 (refd)
Symington v Port Adelaide City Corp (1974) 8 SASR 208 (refd)
TCN Channel Nine Pty Ltd v Australian Mutual Provident Society (1982) 42 ALR 496 (refd)
Vije & Co v Co-operative Central Bank Ltd [1991] 3 MLJ 432 (refd)

Legislation referred to

Legal Profession Act 1976 ss 118(3), 119(2), 120(2), 121(1)(b), 126(1), 128(1)
Rules of the High Court 1980 O 59 r 24
Solicitors Act 1974 [Eng] s 69(1)

Plaintiff in person (*Yau Jiok Hua & Co*).
Lim Tuck Sun (*Chooi & Co*) for the defendant.

Augustine Paul J: The application before me brings into sharp focus the interpretation to be accorded to ss 121(1)(b) and 126(1) read with s 128(1) of the Legal Profession Act 1976 ('the LPA') and the conflict, if any, between them as generated by the submission of both parties in this dispute. All references hereafter in this judgment to statutory provisions shall be to the LPA unless otherwise stated.

Before proceeding any further, it is first necessary to consider the law enunciated in the sections that I have adverted to. I shall first read s 121.

> (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
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> Provided that —
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> (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;

(b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;

(c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with the details of any of the costs covered by the bill as the taxing officer may require.

(2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.

Under this section, the solicitor has the option to deliver a gross sum bill in lieu of detailed items to his client in respect of contentious business done by him. If a gross sum bill is delivered, the client has three months from the date of delivery of the bill in which to ask for a bill containing detailed items, unless process for payment has already been commenced. If the client asks for detailed items during the three months, the gross sum bill will be null and void, and the client will be entitled to have the detailed bill taxed. Should, however, the solicitor commence proceedings on a gross sum bill the client will be entitled to ask for taxation if he does so before the expiration of one month from the service on him of the writ or other originating process. If a gross sum bill is referred to taxation, it will rest with the taxing officer to ask for such details of any of the costs covered by the bill as he may require during the course of the taxation.

I shall now read s 126:

(1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

Under this section, an order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith at any time within six months from the delivery of the bill. The advocate and solicitor may obtain an order for taxation by petition between the period of one month and one year from the date of delivery of the bill of costs. Both parties may proceed to taxation by consent without any such order.

Finally, I shall read s 128:

A (1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

B (2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

This section provides that after the expiration of six months from the delivery of a bill of costs or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs except in the circumstances enumerated therein. Subsection (2) of the section provides that no such C order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs. It is therefore clear that an order for taxation of a bill of costs must be obtained within six months from the delivery of the bill (see *Vije & Co v Co-operative Central Bank Ltd* [1991] 3 MLJ 432) except upon notice to the advocate and solicitor and under D special circumstances to be proved to the satisfaction of the court.

The underlying feature of the conflict between ss 121(1)(b) and 126(1) read with s 128(1) that surfaced in the course of the submission of both parties would appear to arise where a solicitor delivers a gross sum bill and commences proceedings for its recovery after the expiry of six E months from its delivery in the absence of any request from the client for a bill containing detailed items as provided by s 121(1)(a). In such circumstances, it would appear that the client would be unable to obtain an order for taxation as a matter of course as the six-month period prescribed by s 126(1)(b) read with s 128(1) would have expired unless there are special circumstances in his favour. On the other hand, s 121(1)(b) F would appear to entitle him to have the bill taxed upon request if he does so before the expiration of one month from the service of the writ or other originating process claiming the sum due even though the six month period had expired. If in fact there is a conflict between both the provisions, it would mean that the commencement of an action six months after the G delivery of a bill of costs would render the right conferred by s 121(1)(b) otiose. The sequence of events in this case is anchored on this apparent conflict.

Having identified the fundamental legal issue involved in this case, it is now appropriate to state briefly the facts of the case that warranted a consideration of the provisions of the LPA in question. Yau Jiok Hua ('the H plaintiff') is an advocate and solicitor in Melaka practising under the name and style of Messrs Yau Jiok Hua & Co at No 116, Jalan Munshi Abdullah, 75100 Melaka. The defendant retained his services to act as its solicitor in a contentious land reference matter before the High Court in Malaya at Melaka. The plaintiff succeeded in getting an additional compensation in I the sum of RM4,764,806 for the defendant. There was no agreement between the parites in respect of the plaintiff's costs. On 10 January 1996, the defendant, at the request of the plaintiff, paid him fees amounting to RM100,000. On 27 May 1997, the plaintiff delivered a gross sum bill to

the defendant for the balance due. The material parts of this bill read as follows:

To our professional charges for successfully obtaining additional compensation in the sum of RM4,764,806 together with interest of 8% pa from 1 January 1995 until payment RM380,000

RM380,000

Less amount paid RM100,000

Balance due RM280,000

(Ringgit Malaysia Two Hundred and Eighty Thousand only)

Sgd

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Yau Jiok Hua & Co

By its letter dated 27 May 1997, the defendant objected to the bill as being exorbitant and unconscionable and asked the plaintiff to refer the matter to the registrar for taxation. The plaintiff's reply to this letter is dated 6 June 1997. The material parts of the letter read as follows:

We also refer to your reply dated 27 May 1997. We dispute your allegation that our bill was exorbitant or unconscionable. On the contrary, we believe our bill was fair and reasonable in view of the large amount of additional compensation and interest awarded by the court.

Please note that we do not consent to have our bill taxed under s 126(3) of the Legal Profession Act 1976 and therefore if you desire to do so you should obtain an order for taxation under s 126(1) thereof.

Take Notice that unless you obtain such an order as aforesaid we intend to file an action for the recovery of the balance sum due to us after the expiry of six months from the date of delivery of our bill without further reference to you.

The defendant did not take any further step in the matter till the plaintiff issued his writ for the recovery of the costs after the expiry of the six-month period on 9 December 1997. The writ was served on the defendant on 24 December 1997. On 22 January 1998, the defendant filed an application pursuant to s 121(1)(b) praying for an order, inter alia, for taxation of the plaintiff's gross sum bill dated 23 May 1997. In substance, the case for the defendant, as affirmed in the affidavit in support of its application, is that it is entitled, as of right, to have the bill taxed upon request in accordance with s 121(1)(b) as the plaintiff has commenced action for the recovery of the costs.

At the hearing of the application before me, the submission of both parties centered on the conflict between ss 121(1)(b) and 126(1). The plaintiff contended that under the LPA, the right of a party chargeable with a bill to an order for taxation in respect of a contentious business arises under three different circumstances. They are:

(a) where a gross sum bill has been delivered (ss 126(1) and 121(1)(a));

(b) where there is an agreement under s 116 with regard to the costs and the party chargeable with the bill challenges the agreement; and

(c) where no bill has been delivered but the advocate and solicitor commences an action on a gross sum bill (s 121(1)(b)).

The plaintiff stressed forcefully in his argument that s 121(1)(b) can only apply where an advocate and solicitor commences an action against a party chargeable on a gross sum bill without having delivered the bill thus giving him no opportunity to avail himself of the right to taxation as provided by ss 121(1)(a) or 126(1). He said that to construe s 121(1)(b) in order to make it applicable to a situation where a gross sum bill has been delivered without being subjected to the time limit imposed by s 126(1) read with s 128(1) would give rise to a direct conflict between s 121(1)(b) and the other two sections. He added that as the bill had been delivered to the defendant, s 121(1)(b) does not apply with the applicable provision being only s 126. He thus concluded by saying that as the six-month period provided by s 126(1) had lapsed since the delivery of the bill and the commencement of the action without the defendant applying for an order for taxation, it has lost its right to taxation in the absence of any special circumstances having been shown.

In his submission, learned counsel for the defendant said that the taxation of a solicitor and client bill may arise in three circumstances. They are:

(a) where there is an agreement between the solicitor and the client as to costs with regard to contentious business done, taxation may nevertheless be ordered under the provisions of ss 118(3), 119(2) and 120(2);

(b) where an action has been commenced on a gross sum bill, the party chargeable therewith may request for taxation before the expiration of one month from the service on him of the writ or other originating process under s 121(1)(b); and

(c) where a petition is made for an order for taxation as provided by s 126(1).

He said that s 121 is specific as it only applies to cases where:

(a) the advocate and solicitor had been retained by his client in respect of contentious business;

(b) there has been no agreement for remuneration under s 116;

(c) a gross sum bill has been delivered to the client;

(d) an action on the gross sum bill has been commenced by the solicitor against his client; and

(e) one month has yet to lapse from the date of service of the writ or other originating process commencing the action on the gross sum bill.

In such circumstances, s 121(1)(b) expressly enables the client to request for the taxation of the gross sum bill within the prescribed time limit. On the other hand, he said, ss 126(1) and 128(1) are general in nature as they apply both to contentious and non-contentious business and are only applicable where:

(a) a petition has been made by the party chargeable on a bill of costs within six months from the date of delivery of the bill; or

(b) where the advocate and solicitor makes a petition for taxation between one month and one year from the date of delivery of a bill of costs.

He argued that if ss 121(1)(b), 126(1) and 128(1) are to be read together, then on the facts of this case, the one-month period to request for taxation as provided by s 121(1)(b) will be rendered meaningless as the six-month period contemplated by ss 126(1) and 128(1) had expired at the time the action to recover the costs was commenced. Accordingly, he contended that the general provisions contained in ss 126(1) and 128(1) cannot be interpreted to interfere with the specific provision made in s 121(1)(b). He said that the application of the rule of construction generalia specialibus non derogant in this case will enable the two conflicting provisions to operate harmoniously. Consequently, he said, the defendant is entitled to an order for taxation without being affected by the six-month period prescribed by s 126(1) read with s 128(1) as it had made a request for taxation within the one-month period as prescribed by s 121(1)(b).

I shall now consider the rival contentions of the parties. It will be recalled that the main plank of the plaintiff's argument is that s 121(1)(b) becomes applicable only when no bill has been delivered and the advocate and solicitor commences an action for the recovery of his costs. He said that this interpretation would ensure that there is no conflict between ss 121(1)(b) and 126(1) read with s 128(1) as s 121(1)(b) would then become inapplicable with s 126(1) being the only governing law. It is my view that the submission advanced by the plaintiff crumbles by itself in the face of the requirement of s 124 which reads as follows:

> (1) Except as authorised by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.
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> (2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill bona fide complying with this Act.

A This section makes it manifestly patent that no action may be commenced for the recovery of any costs until the expiration of one month from the delivery of a bill of costs except as authorized by the LPA. However, where such an action is sought to be commenced before the expiry of the one-month period, then leave of court is required. It will therefore be seen that the section makes the delivery of a bill of costs a condition precedent to the B commencement of an action for the recovery of the costs except as authorized by the LPA. It follows that the plaintiff's argument that s 121(1)(b) is only applicable when no bill of costs has been delivered cannot be sustained. With respect, therefore, I am unable to agree with his submission. Though it is implicit in my ruling that s 124 applies to a bill C containing detailed items as well as a gross sum bill, I shall revert to its applicability to the latter in more detail in a later part of the judgment. I agree with the submission of learned counsel for the defendant that s 121 must be construed as a specific provision designed for gross sum bills though the route I take to arrive at the same conclusion is different. In this context, it is pertinent for me to observe that a court is not bound by D counsel's argument on the interpretation of a legislation. The fact that counsel have not supported a particular interpretation of a legislation does not, indeed must not, prevent a court from adopting that interpretation if it considers it to be correct (see *Statutory Interpretation* (4th Ed) by Pearce and Geddes at p 5). In *Accident Towing & Advisory Committee v Combined* E *Motor Industries Pty Ltd* [1987] VR 529, McGarvie J said that the responsibility rests with the Court for the correct interpretation to be placed on an enactment. In support of this view his Lordship cited the statement of Lord Wilberforce in *Saif Ali & Anor v Sydney Mitchell & Co (A Firm) & Ors* [1980] AC 198 at p 212:

F > ... Judges are more than mere selectors between rival views — they are entitled to and do think for themselves.

The conflict between s 121(1)(b) and s 126(1) read with s 128(1) would only arise if the latter provisions in referring to a 'bill of costs' contemplate that the phrase refers to a bill containing detailed items as well as a gross G sum bill. In that event, s 121(1)(b) will be affected by s 126(1) by virtue of both provisions dealing with the same subject matter. This will lead to a conflict between the time periods specified in the two sections. If the phrase as used in ss 126(1) and 128(1) can be construed to refer only to a bill containing detailed items and not to a gross sum bill, there will be no conflict between ss 121(1)(b), 126(1) and 128(1) as they will then operate H independently. In that event, the time periods prescribed by ss 126(1) and 128(1) will not affect the right conferred by s 121(1)(b). This makes it necessary to determine whether a bill containing detailed items and a gross sum bill can be classified as 'bill of costs'. If they can be so classified, then both the form of bills will fall within the scope of ss 126(1) and 128(1) with I the resultant ramification as stated above. Such a classification would depend on the meaning of the phrase 'bill of costs' as used in the relevant provisions of the LPA. The two form of bills are the bills that a solicitor may deliver to his client as authorized by s 121(1) which says that '... the solicitor's bill of costs may at the option of the advocate and solicitor either

contain detailed items or be for a gross sum.' Though s 121(1) seems to place both form of bills in the same category, s 132 highlights the characteristic features of a bill containing detailed items to show otherwise. The section reads as follows:

> Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by the Rules of the High Court, and the taxation shall be governed by the Rules.

There is therefore a prescribed manner of drawing up a bill of costs as between advocate and solicitor and client. The relevant rule of court governing the contents of a bill of costs for taxation is O 59 r 24 of the Rules of the High Court 1980 which reads as follows:

> (1) A bill of costs must distinguish, by insertion in separate columns, costs out of pocket from charges for work done and time expended, and showing by a statement, where the bill of costs is to be taxed between solicitor and client, all sums of money received from or agreed to be paid by the client in respect of the cause or matter under taxation, or in connection therewith.
>
> (2) Dates must be furnished to each item, but they shall be kept within the body of the bill, so as to leave the left hand margin for deduction.
>
> (3) Every bill must be headed in the cause or matter to which the same relates, with the name of the party whose bill, it is, and the judgment, direction or order under which the same is to be taxed, and whether the same is to be taxed between party and party or solicitor and client.
>
> (4) A bill of costs must be indorsed with the name or firm and business address of the solicitor whose bill it is.

Thus a bill of costs is a bill that contains detailed items in the manner prescribed by O 59 r 24. This accords with *Ex parte Farmers Fertilizers Corp Ltd* (1916) 16 SR (NSW) 645 where it was held that a bill of costs is a detailed account or memorandum of legal services rendered showing the specific items of work done and the specific charges allocated to each of those. The result is that a bill which is not drawn up as required by O 59 r 24 is not a bill of costs within the meaning of the rule and, consequently, s 132. The distinction between both the form of bills is therefore obvious. The corollary is that a gross sum bill cannot be described as a bill of costs as it does not contain the required particulars. The reference in s 126(1) to the right of taxation of a bill of costs clearly contemplates a bill of costs that is ready for taxation within the meaning of s 132 read with O 59 r 24. As s 128(1) refers to the six month period in s 126(1), it must also refer to a bill in the same form. Furthermore, the reference to taxation of a gross sum bill under s 121(1)(b) and (c) with special powers conferred on the taxing officer by that section clearly excludes a gross sum bill from the ambit of ss 126 and 128. Accordingly, a gross sum bill cannot come within the scope of ss 126(1) and 128(1) for the plain reason that no order for taxation can be made on it except as authorized by s 121(1)(b). I therefore hold that the phrase 'bill of costs' in ss 126(1) and 128(1) cannot accommodate a gross sum bill as it is not a bill in taxable form within the meaning of s 132 read with O 59 r 24. To hold otherwise would lead to an

absurdity. Thus the six-month period prescribed by s 126(1) and the injunction imposed by s 128(1) do not apply to a gross sum bill. The law applicable to a gross sum bill would therefore be as stated in s 121.

I now return to s 124 which, as I said earlier, demolishes the substratum of the argument advanced by the plaintiff. This is an important provision in the LPA. It requires a bill of costs to be delivered to the chargeable person before an action can be commenced for the recovery of costs. The reference to the delivery of a 'bill of costs' in the section would, on a literal reading of the section, exclude a gross sum bill from its ambit in the light of the meaning of the phrase that I have discussed. This would preclude the commencement of an action to recover costs based on a gross sum bill. Whether that was the true intention of Parliament in enacting the section is best understood by first referring to some rules of statutory interpretation. It is a rule of construction that where a word is used consistently in a statute, it should be given the same meaning consistently (see *Craig Williamson Pty Ltd v Barrowcliff* [1915] VLR 450). But this rule can be abandoned if the context in which a word is used in one place in a statute compels some other than the ordinary meaning to be given (see *Mort v Bradley* [1916] SALR 129; *Madras Electric Supply Corp Ltd v Boarland (Inspector of Taxes)* [1955] AC 667). Thus the meaning that I have ascribed to the phrase 'bill of costs' in ss 126 and 128 can be departed from in interpreting s 124(1) if the context in which it is used in the latter section warrants it. This requires a consideration of some other rules of construction. It is settled law that no part of a legislation can be considered in isolation from its context; the whole of it must be considered (see *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth)* (1981) 147 CLR 297). It has been held that where there is lack of clarity in an enactment, the court will seek the true intention of Parliament by attending to the whole of the statute and by constructing all the parts together (see *Re Pratt* [1972] QWN 31). There is an overriding rule of statutory interpretation that it may be impossible to give a full and accurate meaning to every word in a legislation (see *Brisbane City Council v Attorney General (Qld)* (1905) 5 CLR 695). In such cases, the duty of the court is to give the words the contruction that produces the greatest harmony and the least inconsistency (see *Australian Alliance Assurance Co Ltd v Attorney General (Qld)* [1916] QSR 135). Words which may be held to take a broad meaning if read on their own may have to be construed more narrowly when read in the light of the remainder of the section (see *TCN Channel Nine Pty Ltd v Australian Mutual Provident Society* (1982) 42 ALR 496). In interpreting a section in a statute, it is legitimate to look at other sections or subsections as throwing light on how much importance Parliament attached to the matter under consideration (see *Milford Haven Conservancy Board v Inland Revenue Commissioners & Ors* [1976] 1 WLR 817). Thus a legislation cannot be compartmentalized and scrutinised molecularly when interpreting it (see *Arataki Honey Ltd v Minister of Agriculture & Fisheries* [1979] 2 NZLR 311). This rule permits the court to avoid an absurd construction (see *Ali v Wolkind* [1975] 1 WLR 170) as well as repugnancy and inconsistency (see *Hamilton Harbour Commissioners v City of Hamilton* [1976] 1 MPLR

133). In this regard, I refer to *Kesultanan Pahang v Sathask Realty Sdn Bhd* [1998] 2 MLJ 513, where Mohd Azmi FCJ said at pp 545–546:

> ... On the facts of the present appeal, I consider Lord Wensleydale's golden rule of construction to be the most relevant and instructive. I could do no better than to reproduce the judgment of Stephenson LJ in *Manson v Duke of Westminster & Ors* [1981] 2 All ER 40 at p 48 where his Lordship said:
>
> 'I return therefore to Lord Wensleydale's golden rule cited by Lord Blackburn in *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at pp 764–765, (1874–80) All ER Rep 1 at p 12:
>
> "... that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the word will bear." '

I shall now consider whether it was the intention of Parliament to exclude gross sum bills from the ambit of s 124(1) in the light of the rules that I have adverted to. It will be observed that the underlying theme of s 121 which deals with gross sum bills is the delivery of such bills to the persons chargeable before commencement of an action to recover the costs. Though the section itself does not expressly require delivery of a gross sum bill before commencement of an action, it is worded on an implication that there must be such delivery. The section proceeds on such a basis without specifically referring to s 124(1). On the effect of a section worded in such manner, I refer to *Braunack v Goers* (1979) 23 SASR 1 where White J said at p 16:

> It is not necessary for one section to refer specifically to another section before the first section can be construed as being subject or overriding or in some other way qualifying the other section.

Section 121 must therefore be read as being subject to s 124(1) in the light of the reference that it makes to the delivery of gross sum bills. That would require s 124(1) to be interpreted to include both form of bills. If such an interpretation is not given to s 124(1), the language employed in the section would preclude the commencement of an action based on a gross sum bill and render s 121 meaningless. This would not only lead to a head-on collision between that section and s 121 with its reference to commencement of an action on a gross sum bill but would also produce absurd results in that an advocate and solicitor who has delivered a gross sum bill would be disabled from commencing an action to recover the costs. Furthermore, the use of the words '... recovery of *any* costs due for any business done ...' in s 124(1) preceding the words '... bill of costs ...' is wide enough to cover the costs in both the form of bills. These reasons suggest that it was not the intention of Parliament to restrict the operation of s 124(1) to delivery of a bill containing detailed items only. In the premises, it is my view that Parliament intended to make the section

applicable to both form of bills. Accordingly, the phrase 'bill of costs' in s 124(1) cannot be given a literal interpretation as it implicitly refers to both form of bills. In order to give effect to the implicit intention of the section, it is necessary to make it express. It is trite law that in construing a statute a court may make express what is implicit in it (see *Salemi v MacKellar (No 2)* (1977) 137 CLR 396). Words in a statute can be modified in this way when it appears that the implication suggested is necessary (see *Aitkin v Commonwealth* (1972) 46 ALJR 631) to give the words sense and meaning in their context (see *Macquarie University v Ryde Municipal Council* [1977] 1 NWSLR 304). However, there must be compelling reasons before words are implied into a statute (see *Commissioner of Pay-roll Tax (NSW) v RG Elsegood & Co Pty Ltd* [1983] 1 NSWLR 223). There are numerous cases in which words have been implied into a statute. See, for example, *R v Curran* [1983] 2 VR 133; *Bakker v Stewart* [1980] VR 17; *Ganke v Deputy Commissioner of Taxation of Australia* (1975) 25 FLR 98; and *Symington v Port Adelaide City Corp* (1974) 8 SASR 208. The reasons that I have advanced indicate that there are compelling reasons to imply words into s 124(1) as the implication of the section makes it necessary to modify it in order to construe it in its proper perspective and context. In implying words into s 124(1), I seek guidance from the equivalent provision in s 69(1) of the Solicitors Act 1974 of England which reads as follows:

> Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a *bill of those costs* is delivered in accordance with the requirements mentioned in subsection (2); ... . (Emphasis added.)

The words that I have emphasised show that the section is not confined to any one particular form of bill. This is particularly significant in the light of the fact that the Solicitor's Act 1974 of England has provisions which are similar to ss 121 and 126 of the LPA. In order to make s 124(1) applicable to a bill containing detailed items and a gross sum bill as intended, the words '... bill of costs ...' in the section must be read as '... bill of those costs ...' as appearing in its English counterpart. Such an interpretation will give s 124 the intended meaning.

The law enshrined in s 121 is therefore clear. The solicitor's bill of costs may at his option either contain detailed items or be for a gross sum. Pursuant to s 121(1)(a), the party chargeable upon whom a gross sum bill has been delivered may require the advocate and solicitor to deliver to him in lieu of the costs a bill containing detailed items, and the gross sum bill shall thereupon be of no effect. Upon delivery of the bill containing the detailed items, the party chargeable may, if he desires to have the bill taxed, by petition obtain an order to that effect as provided by s 126(1). If he does not take any action after having received the bill containing the detailed items, then the sanctions contained in ss 126(1) and 128(1) shall apply. On the other hand, if the party chargeable does not take any step after service on him of the gross sum bill and an action is commenced for the recovery of the costs, his only remedy is to request for an order of

taxation within a period of one month from the service on him of the writ or other originating process claiming for the costs. The taxation shall be on the gross sum bill as provided by s 121(1)(b) and (c). Needless to say, he would have lost his right to taxing of a bill containing detailed items.

On the law that I have stated thus far, the defendant is clearly entitled to an order for taxation on the gross sum bill. In the upshot, I allow the defendant's application with costs.

Defendant's application allowed with costs.

Reported by Tan Cheng Siong